

STATE OF MICHIGAN
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES BYERS,

Plaintiff,

v.

HYKEEM A. SIMMONS and
WESTERN EXPRESS, INC.,

Defendants.

NOLAN & SHAFER, PLC
By: Matthew G. Swartz (P75257)
40 Concord Avenue
Muskegon, MI 49442
(231) 722-2444
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mgschwartz@wemakeitright.com
Attorneys for Plaintiff

SCOPELITIS, GARVIN, LIGHT,
HANSON & FEARY
By: Michael J. Tauscher (P31817)
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mtauscher@scopelitis.com
Attorney for Defendants

NOTICE OF REMOVAL

TO: Matthew G. Swartz (P75257) Michael J. Tauscher (P31718)
Nolan & Shafer, PLC Scopelitis, Garvin, Light, Hanson & Feary
40 Concord Avenue 100 West Big Beaver, Suite 200
Muskegon, MI 49442 Troy, MI 48084

Defendants, Hykeem A. Simmons and Western Express, Inc., file this Notice of Removal of the above-entitled action to the United States District court for the Western District of Michigan, and in support thereof states as follows:

1. On or about September 23, 2021, Plaintiff commenced a civil action in the 14th Circuit Court, Muskegon, Michigan, styled, James Byers v. Hykeem A. Simmons and Western Express, Inc., Case No. 21-003984-NI; (See **Exhibit 1**, Summons and Complaint). Said Exhibit 1 comprises all of the processes, pleadings and orders, which are on file in state court.

2. Western Express, Inc. was served with a copy of the Complaint on or about October 5, 2021, in Nashville, Tennessee. This Notice of Removal is filed within thirty (30) days of service of the Complaint upon and is therefore, timely filed pursuant to 28 U.S.C. §1446(b).

3. Based upon the allegations contained in the Complaint, the above-entitled action is a civil suit of which this Court has original jurisdiction under 28 U.S.C. §1332 because diversity of citizenship exists between the parties.

4. Plaintiff's Complaint alleges that Plaintiff is a resident of the City of Norton Shores, County of Muskegon, Michigan, and thus is a citizen of Michigan; and further alleges that Defendant Hykeem A. Simmons is a resident of Nashville, Tennessee; the complaint further alleges that Western Express, Inc. is a Tennessee Corporation. (See Exhibit 1, Complaint ¶¶ 1 and 2).

5. Defendant Western Express, Inc. is a Tennessee Corporation with its principal place of business in Nashville, Tennessee and is thus a citizen of Tennessee.

6. Hykeem A. Simmons is a resident and citizen of Tennessee.

7. As stated in his Complaint, Plaintiff alleges serious and permanent injuries including injuries to thoracic spine, injuries to the lumbar spine, and sprain of the left knee. (see ¶¶ 13 a – e of Plaintiff's Complaint).

8. Plaintiff has stated in its state court Initial Disclosures, served pursuant to MCR 2.302(A), regarding the computation of damages pursuant to MCR 2.302(A)(1)(f), that he is "claiming an amount deemed reasonable and fair to a jury, believed to be in excess of Defendant's policy limits."

9. Plaintiff's Complaint alleges an amount in controversy in excess of \$25,000.00 (See Exhibit 1, ¶5); this allegation, in conjunction with the alleged continuing injuries and resulting damages alleged by Plaintiff, including the claim of damages in excess of Defendants' policy limits, satisfy the jurisdictional threshold of 28 USC § 1332(a).

10. Based upon the foregoing, Defendant is entitled to remove this action from state to federal court pursuant to 28 USC § 1332 and § 1446(b).

11. Hykeem A. Simmons and Western Express, Inc., dispute Plaintiff's allegations as to the aforementioned causes of action, and deny that Plaintiff is entitled to judgment against them.

12. Hykeem A. Simmons and Western Express, Inc., reserve all defenses, including, but not limited to, those under Rule 12(b) of the Federal Rules of Civil Procedure and does not waive said defenses by filing of this notice.

13. A copy of this Notice was filed this date with the Clerk of the United States District Court, Western District of Michigan, filed with the 14th Circuit Court, Muskegon County Circuit Court, and served via email and First Class U.S. Mail to Plaintiff's attorney.

WHEREFORE, Defendants Hykeem A. Simmons and Western Express, Inc., pray that Plaintiff's action be removed to this Court; that this Court accept jurisdiction, that said action be placed on the docket of this Court for further proceedings as though originally instituted in this Court; and for such other and further relief as may be just and proper.

Respectfully submitted,

SCOPELITIS, GARVIN, LIGHT,
HANSON & FEARY

Dated: October 29, 2021

/s/ Michael J. Tauscher

By: Michael J. Tauscher (P31817)
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CERTIFICATE OF SERVICE

The undersigned states that on October 29, 2021, he electronically filed the foregoing Notice of Removal with the United States District Court for the Western District of Michigan; in addition, I have filed the Notice of Removal with the 14th District Court, for the County of Muskegon, via Federal Express, and served the Notice of Removal via email and First Class U.S. Mail upon:

Matthew G. Swartz, Esq.
Nolan & Shafer, PLC
40 Concord Avenue
Muskegon, MI 49442
mgschwartz@wemakeitright.com

Respectfully submitted,

SCOPELITIS, GARVIN, LIGHT,
HANSON & FEARY

Dated: October 29, 2021

/s/ Michael J. Tauscher
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